

REMARKS

This Amendment is being timely filed since October 28, 2006 falls on a Saturday.

Applicants respectfully request the Examiner to reconsider the present application in view of the foregoing amendments to the claims and the following comments.

Status of the Claims

In the present Amendment, claims 1, 7, 8, 13-20, 27-34 and 37-44 have been amended. Claims 2-6, 9-12 and 21-26 were previously canceled without prejudice or disclaimer of the subject matter therein. Also, claims 35 and 36 are indicated to be allowable (at page 8 of the outstanding Office Action), but are canceled herein without prejudice or disclaimer of the subject matter contained therein. Thus, claims 1, 7, 8, 13-20, 27-34 and 37-44 are pending in the present application. Applicants further note that claims 1, 16, 18, 20 and 30-34 are independent product claims, and claims 7 and 27 are independent method claims.

No new matter has been added by way of these amendments because each amendment is supported by the present specification. For example, the various claim amendments have support in the present specification at least at page 1, first full paragraph and the multiple Examples (see Table 1 wherein the components (A) have 10 carbon atoms), and also supported by the subject matter in canceled claims 35-36. Otherwise, the claim amendments are for proper antecedent basis and are non-narrowing in scope (e.g., "The harvested plant freshness-keeping composition of claim . . ."). Regarding the pending product claims, Applicants respectfully submit that: "If the claim preamble, when read in the context of the entire claim, recites limitations of the claim,

or, if the claim preamble is ‘necessary to give life, meaning, and vitality’ to the claim, then the claim preamble should be construed as if in the balance of the claim.” *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165-1166 (citing *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 480-481 (CCPA 1951); see also *Rowe v. Dror*, 112 F.3d 473, 478, 42 USPQ2d 1550, 1553 (Fed. Cir. 1997); *Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1257, 9 USPQ2d 1962, 1966 (Fed. Cir. 1989)).

Based upon the above considerations, entry of the present amendment is respectfully requested.

In view of the following remarks, Applicants respectfully request that the Examiner withdraw all rejections and allow the currently pending claims. A previous rejection has been withdrawn (see paragraph I., page 2 of the current Office Action), two rejections have been maintained, and a new rejection is outstanding.

Issues Under 35 U.S.C. § 103(a)

Claims 1, 7, 8, 14-16, 18, 19, 27-29, 31 and 34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nonomura *et al.* ‘104 (U.S. Patent No. 5,958,104), JP ‘032 (JP 5111032) and JP ‘310 (JP 63033310) (see paragraph II., pages 2-4 of the Office Action).

Also, claims 7 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sakai *et al.* ‘801 (JP 02209801) (see paragraph III., page 4 of the Office Action).

These rejections are respectfully traversed, and reconsideration and withdrawal of these rejections are respectfully requested.

Distinctions over the Combination of Nonomura '104, JP '032 and JP '310

Applicants respectfully maintain that Nonomura '104, JP '032 and JP '310 have been improperly combined such that one of ordinary skill in the art would not combine such disclosures in an effort to achieve what is instantly claimed. In the outstanding Office Action, the Examiner maintains this rejection as stated on pages 3-4 of the Office Action. However, Applicants respectfully maintain their previous arguments and position as stated in the reply dated May 2, 2006. Still, Applicants note that the present invention is directed to treating harvested plants. Accordingly, in this regard, this rejection has been overcome in that, e.g., the requisite motivation in forming a *prima facie* case of obviousness is lacking. *See In re Vaeck*, 947 F.2d 488, 493, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991).

The cited primary reference of Nonomura '104 merely discloses an alkyl polyglycoside having 1 to 7 carbon atoms in the alkyl group and growth of a living plant. The cited Nonomura '104 reference lists "fungicides" among a laundry list of ingredients and fails to disclose the present invention of an alkyl polyglycoside and application to a harvested plant. The cited secondary reference of JP '032 shows a sterilizer such as calcium cyanamide or cyanamide. The cited secondary reference of JP '310 describes a combination of a plant-growing agent such as chitin or chitosan with a surfactant or brassinolide, which means application to a living plant. Thus, JP '310 fails to suggest or disclose anything regarding application to a harvested plant. Accordingly, each of the cited references fails to disclose harvested plants such that a *prima facie* case of obviousness has not been established. *In re Vaeck; supra*. In other words, there is no disclosure of all claimed features. Further, none of the cited references discloses or teaches a use

of the cited combination of components for harvested plants, which means that requisite motivation is also lacking. *In re Vaeck; supra*. Thus, this rejection under § 103(a) has been overcome. Reconsideration and withdrawal of this rejection are respectfully requested.

Distinctions over the Modification of Sakai '801

Applicants submit that the cited modification of Sakai '801 is improper. The cited Sakai '801 reference discloses a brassinolide and a surfactant such as polyoxyethylene sorbitan aliphatic ester for application to a living plant. But as mentioned above, there is no disclosure or suggestion in Sakai '801 regarding harvested plants. Thus, under *In re Vaeck, supra*, this rejection has been overcome.

Applicants also respectfully maintain that Sakai '801 does not match the instantly claimed component (C) as asserted in the Office Action, wherein a *prima facie* case of obviousness has not been established since there is no disclosure of all claimed features. *In re Vaeck; supra*. Thus, this rejection has been overcome because Sakai '801 does not disclose all instantly claimed features.

Unexpected Results

Applicants respectfully submit that the present invention has achieved unexpected results, whereby such results rebut any asserted *prima facie* case of obviousness. See *In re Corkill*, 711 F.2d 1496, 226 USPQ (BNA) 1005 (Fed. Cir. 1985); see also *In re Papesch*, 315 F.2d 381, 137 USPQ (BNA) 43 (CCPA 1963). As stated in M.P.E.P. § 2144.09 (see section entitled “*Prima*

Facie Case Rebuttable By Evidence of Superior or Unexpected Results"), any rejection under 35 U.S.C. § 103(a) may be rebutted by a sufficient showing of unexpected results for the present invention.

Applicants note the advantages of using the instantly claimed combinations that has surfactant(s) (A). The instantly claimed compositions (and uses thereof) unexpectedly improve and maintain the freshness of harvested plants. These unexpected advantages have been experimentally proven, wherein Applicants respectfully refer the Examiner to the experimental data in Applicants' specification. For instance, by using the claimed alkyl polyglycoside having the 10-18 carbons, such as decyl polyglucoside (10 carbons) in the form of Inventive products 1-6 (see Table 1 on page 15), the present invention unexpectedly improves the freshness of various harvested plants, including chrysanthemums (see Table 2 on page 18), carnations, roses, etc. Thus, the instantly claimed combinations of ingredients that includes component (A) has achieved unexpected results.

Because the present invention has achieved unexpected results, any asserted *prima facie* case of obviousness has been sufficiently rebutted. *Corkill; Papesch; supra.* Reconsideration and withdrawal of all § 103(a) rejections are respectfully requested.

Issues under 35 U.S.C. § 112, First Paragraph

Claims 1, 7, 8, 13-20, 27-34 and 37-44 stand rejected under 35 U.S.C. § 112, first paragraph, for asserted lack of enablement (see paragraph IV., pages 4-8 of the Office Action). Applicants respectfully traverse.

Applicants respectfully submit that the rejection of the product claims should be withdrawn because the making and using of a product claim is different from making and using a method claim. Further, regarding the product claims, the mode of administration is well-known and contemplated in the art (e.g.; a consumer can simply read the commercial bottle and knows how to spray the instantly claimed freshness-keeping composition onto the desired plants), and thus the product claims satisfy and comply with the provisions of 35 U.S.C. § 112, ¶ 1. *In re Johnson*, 282 F.2d 370, 373, 127 USPQ 216, 219 (CCPA 1960); *see also* M.P.E.P. § 2164.01(c).

In any event, Applicants note that the Examiner indicates that the instant rejection is directed to non-harvested plants (see the Office Action at page 6, first paragraph). In this regard, this rejection is rendered moot and/or has been overcome since the claims as presented herein are directed to harvested plants.

Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw this rejection.

Conclusion

Applicants have taken substantial steps in advancing prosecution of this case, and a full and complete response has been made to all issues as cited in the Office Action. Thus, Applicants respectfully request that a timely Notice of Allowance issue for the present case.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Eugene T. Perez (Reg. No. 48,501)

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Art Unit 1616
Reply to Office Action of July 28, 2006

Docket No.: 0425-0821P

at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

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